

1 F. Christopher Austin (Nevada Bar No. 6559)

2 **WEIDE & MILLER, LTD.**

3 10655 Park Run Drive, Suite 100

4 Las Vegas, Nevada 89144

5 Tel: (702) 382-4804

6 Fax: (702) 382-4805

7 Email: [caustin@weidemiller.com](mailto:caustin@weidemiller.com)

8 Of Counsel:

9 Daniel J. Melman (admitted *pro hac vice*)

10 Guy Yonay (admitted *pro hac vice*)

11 **PEARL COHEN ZEDEK LATZER BARATZ LLP**

12 1500 Broadway, 12th Floor

13 New York, NY 10036

14 Tel: (646) 878-0800

15 Fax: (646) 878-0801

16 Email: [DMelman@pearlcohen.com](mailto:DMelman@pearlcohen.com)

17 [GYonay@pearlcohen.com](mailto:GYonay@pearlcohen.com)

18 *Attorneys for Plaintiff High Sec Labs Ltd.*

19 **UNITED STATES DISTRICT COURT**

20 **DISTRICT OF NEVADA**

21 HIGH SEC LABS LTD.,

22 Plaintiff,

23 v.

24 IPGARD INC., and  
25 SMARTAVI INC.,

26 Defendants.

Case No. 2:20-cv-01797-MMD-NJK

~~PROPOSED~~ **ORDER ON FEDERAL  
RULE 502 CLAWBACK AGREEMENT**

27 Plaintiff High Sec Labs Ltd. (“High Sec”) and Defendants iPGARD Inc.  
28 (“iPGARD”) and SmartAVI Inc. (“SmartAVI”) (collectively “Defendants”), have agreed,  
pursuant to Rule 502 of the Federal Rules of Civil Procedure, to the following order  
regarding claims of privilege asserted after production. The parties, having reached an  
agreement (hereinafter the “Clawback Agreement”), and good cause appearing therefore,  
the Court hereby ORDERS as follows:

1. For purposes of this Clawback Agreement, an “Inadvertently Produced

1 Document” is any disclosure of a document, communication, or other information produced  
2 to a party in this litigation that could have been withheld, in whole or in part, based on a  
3 legitimate claim of attorney-client privilege, work-product protection, or other applicable  
4 privilege.

5 2. Inclusion of any Inadvertently Produced Document in a production shall not  
6 result in any waiver of any privilege or protection associated with such information, nor shall  
7 it result in a subject matter waiver of any kind, in either the litigation pending before the  
8 court or any other federal or state proceeding.

9 3. A producing party may demand the return of any Inadvertently Produced  
10 Document, which demand shall be made to the receiving party’s counsel in writing and shall  
11 contain information sufficient to identify the Inadvertently Produced Document, if possible.  
12 If the document is used at a deposition, the producing party may object at the deposition and  
13 the party seeking to use the Inadvertently Produced Document shall withdraw the document.  
14 However, in the event that any portion of the Inadvertently Produced Document does not  
15 contain privileged information, the producing party shall also provide a redacted copy of the  
16 Inadvertently Produced Document in accordance before the close of the deposition that omits  
17 the information that the producing party believes is subject to a claim of privilege.  
18

19 4. If the producing party becomes aware of the Inadvertently Produced  
20 Document prior to a deposition, it shall write to the receiving party as discussed in paragraph  
21 3. Within five (5) calendar days of the demand for the Inadvertently Produced Document  
22 (or other time mutually agreed by the parties), the producing party shall provide the receiving  
23 party with a privilege log for such document that is consistent with the requirements of the  
24 Federal Rules of Civil Procedure, setting forth the basis for the claim of privilege for the  
25 Inadvertently Produced Document. In the event that any portion of the Inadvertently  
26  
27  
28

1 Produced Document does not contain privileged information, the producing party shall also  
 2 provide a redacted copy of the Inadvertently Produced Document that omits the information  
 3 that the producing party believes is subject to a claim of privilege.

4 5. Upon receipt of a written demand for return of an Inadvertently Produced  
 5 Document, the receiving party shall immediately return the Inadvertently Produced  
 6 Document (and any copies thereof) to the producing party and shall immediately delete all  
 7 electronic versions of the document.  
 8

9 6. Subject to Paragraph 5 herein, the receiving party may object to the producing  
 10 party's designation of an Inadvertently Produced Document by providing written notice of  
 11 such objection within seven (7) calendar days of its receipt of a written demand for the return  
 12 of an Inadvertently Produced Document. Any such objection that cannot be resolved by the  
 13 parties shall be submitted to the Court for resolution after an in camera review of the  
 14 Inadvertently Produced Document. Pending resolution of the matter by the Court, the parties  
 15 shall not use any documents that are claimed to be Inadvertently Produced Documents in this  
 16 litigation.  
 17

18 Dated: March 17, 2021  
 19

20 **WEIDE & MILLER, LTD.**

21 /s/ F. Christopher Austin

22 F. Christopher Austin (Nevada Bar No. 6559)  
 23 10655 Park Run Drive, Suite 100  
 24 Las Vegas, NV 89144  
 25 Tel: (702) 382-4804  
 26 Fax: (702) 382-4805  
 27 Email: [caustin@weidemiller.com](mailto:caustin@weidemiller.com)  
 28

**HOWARD & HOWARD ATTORNEYS  
 PLLC**

/s/ W. West Allen

W. West Allen  
 3800 Howard Hughes Pkwy., Suite 1000  
 Las Vegas, NV 89169  
 Tel: (702) 257-1483  
 Email: [wwa@h2law.com](mailto:wwa@h2law.com)

**PEARL COHEN  
ZEDEK LATZER  
BARATZ LLP**

Daniel J. Melman (*pro hac vice*)  
Guy Yonay (*pro hac vice*)  
1500 Broadway, 12th Floor  
New York, NY 10036  
Tel: (646) 878-0800  
Fax : (646) 878-0801  
Email: [GYonay@pearlcohen.com](mailto:GYonay@pearlcohen.com)  
[DMelman@pearlcohen.com](mailto:DMelman@pearlcohen.com)

*Attorneys for Plaintiff  
High Sec Labs Ltd.*

**MAYNARD COOPER & GALE, LLP**

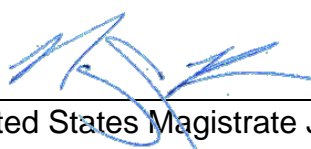
Sasha Rao (*pro hac vice*)  
600 Montgomery Street, Suite 2600  
San Francisco, CA 94111  
Tel: (415) 646-4702  
Email: [srao@maynardcooper.com](mailto:srao@maynardcooper.com)

Ashe Puri (*pro hac vice*)  
1925 Century Park East, Suite 1700  
Los Angeles, CA 90067  
Tel: (310) 596-4344  
Email: [apuri@maynardcooper.com](mailto:apuri@maynardcooper.com)

*Attorneys for  
Defendants iPGARD  
Inc. and SMARTAVI  
Inc.*

IS SO ORDERED

Dated: March 18, 2021

  
United States Magistrate Judge